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Free speech: guidance for universities and students organising events

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Free speech: guidance for universities and students organising events

Everyone has the right to free speech within the law. This can include the right to say things which, though lawful, others may find disturbing, upsetting or offensive.

This right is a foundation for democracy. It is important in all settings, but especially in universities, where education and learning are advanced through dialogue and debate. It underpins academic freedom. This right extends to all forms of expression.

Below we set out five principles on upholding freedom of speech in universities:

- 1) Everyone has the right to free speech within the law.
- 2) Universities should seek to expose their members and students to the widest possible range of views—whilst ensuring that they act within the law.¹
- 3) If a speaker breaks the law, it is the speaker who is culpable. However, if those organising an event invite speakers who they might reasonably have suspected would use their platform to break the law (i.e. because they have done so previously) they may fall foul of the law themselves.²
- 4) Protest is itself a legitimate expression of freedom of speech. However, protest must not shut down debate. Protesters who attempt to prevent viewpoints being heard infringe upon the rights of others. Student Unions, Universities and law enforcement must hold such people to account—and ensure that sufficient resources are in place to prevent protesters from blocking debate.
- 5) Students should not be deterred from organising events due to over bureaucratic procedures. Where free speech is inhibited, there should be recourse available to challenge that inhibition.

The guidance is designed for universities and students in England and Wales. Different laws apply to universities in Scotland and Northern Ireland, but nonetheless we hope that they find this useful.

Human Rights & the Right to Free Speech

- 1) Article 9 of the European Convention on Human Rights, which is incorporated into UK law through the Human Rights Act 1998, says that “Everyone has the right to freedom of thought, conscience and religion”.
- 2) Article 10 of the of the ECHR sets out the right to freedom of speech. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and can extend to the right to say things which may shock or disturb the listener.
- 3) Article 11 of the ECHR sets out the right to freedom of assembly and association. Together the rights to freedom of speech and association cover the right to peaceful protest.

1 See detailed guidance below.

2 See detailed guidance below.

4) In addition to these Convention rights:

- Section 43 of the Education (No 2) Act 1986 imposes an obligation on university governing bodies to take reasonably practicable steps to ensure that freedom of speech within the law is secured, both on university and student union premises; and
- Section 202(2)(a) of the Education Reform Act 1988 requires university Commissioners to have regard to the need to ensure academic freedom.

5) The right to free speech can be limited by law, as necessary in a democratic society,³ but any such limitations must be proportionate. In a democracy it is important that people respect others' views even when they differ from their own, but unless an event would give rise to a breach of the law, universities and other organisations should respect the right to free speech.

Limitations on Free Speech in UK Law

6) The following are prohibited by law:

a) **Threat to kill:**

- A person who without lawful excuse makes a threat to kill that person or a third person, intending that the other person would fear it would be carried out.⁴

b) **Fear or provocation of violence:**

- Use towards another person of threatening, abusive or insulting words or behaviour, or distributing or displaying to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.⁵

c) **Acts intended or likely to stir up hatred on grounds of race;⁶ religion;⁷ or sexual orientation;⁸**

3 Article 10 allows restrictions to be placed on freedom of expression for the following purposes:

- i. in the interests of national security, territorial integrity or public safety;
- ii. for the prevention of disorder or crime;
- iv. to protect health or morals;
- v. for the protection of the reputation or rights of others;
- vi. for preventing the disclosure of information received in confidence; or
- vii. for maintaining the authority and impartiality of the judiciary.

Any restrictions must also be clearly set out in law, necessary in a democratic society, and proportionate to the legitimate aim.

4 Offences Against the Person Act 1861, [Section 16](#)

5 Public Order Act 1986, [Section 4](#)

6 Public Order Act 1986, [Sections 18–23](#)

7 Public Order Act 1986, [Sections 29B–29F](#)

8 Public Order Act 1986, [Sections 29B–29F](#)

- “Racial hatred” means “hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.”⁹
- “Religious hatred” means “hatred against a group of persons defined by reference to religious belief or lack of religious belief.”¹⁰
- “Hatred on the grounds of sexual orientation” means “hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).”¹¹
- These offences involve threatening, abusive or insulting words or conduct, or the display of any written material which is threatening, abusive or insulting, and an intention to stir up hatred, or a likelihood of doing so having regard to the circumstances.
- The following acts are offences if intended or likely to stir up hatred:
 - Use of words or behaviour or display of written material;¹²
 - Publishing or distributing written material;¹³
 - Public performance of a play;¹⁴
 - Distributing, showing or playing a recording;¹⁵
 - Broadcasting or including programme in cable programme service;¹⁶
 - Possession of racially inflammatory material.¹⁷
- d) **Encouraging or assisting the commission of an offence;**¹⁸
 - Intentionally encouraging or assisting an offence;¹⁹
 - Encouraging or assisting an offence believing it will be committed;²⁰ and
 - Encouraging or assisting offences believing one or more will be committed.²¹

9 Public Order Act 1986, [Sections 17](#)

10 Public Order Act 1986, [Section 29A](#)

11 Public Order Act 1986, [Section 29AB](#)

12 Public Order Act 1986, [Sections 18](#) and [29B](#)

13 Public Order Act 1986, [Sections 19](#) and [29C](#)

14 Public Order Act 1986, [Section 20](#) and [29D](#)

15 Public Order Act 1986, [Section 21](#) and [29E](#)

16 Public Order Act 1986, [Section 22](#) and [29F](#)

17 Public Order Act 1986, [Section 23](#) and [29G](#)

18 Replaces the common law offence of incitement for all offences committed after 1 October 2008

19 Serious Crime Act 2007, [Section 44](#)

20 Serious Crime Act 2007, [Section 45](#)

21 Serious Crime Act 2007, [Section 46](#)

e) **Terrorism-related offences:**

- Incitement to commit acts of terrorism overseas;²²
- Inviting support for a proscribed organisation;²³
- Encouragement of terrorism,²⁴ including the unlawful glorification of the commission or preparation of terrorism, whether in the past, the future, or in general;²⁵
- Dissemination of terrorist publications;²⁶ and
- Encouragement and dissemination of terrorist publications via the internet.²⁷

f) **Intentional harassment, alarm or distress:**

- Intentionally causing a person harassment, alarm, or distress by threatening, abusive or insulting words or behaviour, or disorderly behaviour, or the display of any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.²⁸

g) **Harassment, alarm or distress (without intent):**

- Using threatening or abusive words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress.²⁹

h) **Defamation:**

- Publication that has caused or is likely to cause serious harm to the reputation of the claimant.³⁰

i) **Endeavour to break up a Public Meeting:**

- Acting in a disorderly manner for the purpose of preventing a public meeting.³¹

22 Terrorism Act 2000, [Section 59](#)

23 Terrorism Act 2000, [Section 12](#)

24 Terrorism Act 2006, [Section 1](#)

25 Terrorism Act 2006, [Section 1](#); Terrorism Act 2006, [Section 21](#): This includes activities which are carried out in a manner that associates the organisation with any statements containing glorification. A "statement" includes communication without words consisting of sounds or images or both (Terrorism Act 2000, [Section 3\(5C\)](#)). "Glorification" is defined as "any form of praise or celebration" (Terrorism Act 2000, [Section 3\(5C\) Terrorism Act 2000](#)).

26 Terrorism Act 2006, [Section 2](#). For the purposes of this section, a publication is a 'terrorist publication' if "it is likely to be understood, by some or all of the persons to whom it is or may become available [...] as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism".

27 Terrorism Act 2006, [Section 3](#)

28 Public Order Act 1986, [Section 4A](#)

29 Public Order Act 1986, [Section 5](#)

30 Defamation Act 2013, [Section 1](#)

31 Public Meeting Act 1908, [Section 1](#)

Communications

7) Laws can also impact on advertising of events and other communications around events or topics for debate (such as blogs, web forums, web chats and emailing). Responsible promotion of a forthcoming event should not cause problems, but the following need to be borne in mind:

a) **Malicious communications:**

- Sending a letter, electronic communication or article of any description which conveys a message with intent to cause anxiety or distress that is:
 - Indecent or grossly offensive; or
 - Conveys a threat with intention to cause distress or anxiety to the recipient; or
 - Conveys information which is false and known or believed to be false by the sender; or

Any article or electronic communication which is, in whole or in part, of an indecent or grossly offensive nature.³²

b) **Improper use of public electronic communications network:**

- Using a public electronic communications network to send (or cause to be sent) a grossly offensive, indecent, obscene or menacing message;³³
- Using a public electronic communications network to send (or cause to be sent), for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that the sender knows to be false or persistently makes use of a public electronic communications network.³⁴

c) **Harassment:**³⁵

- A course of unwanted conduct (at least two incidents) which amounts to harassment of another which the defendant knows or ought to know amounts to harassment.³⁶
- Harassment includes alarming the person or causing the person distress.³⁷

Equality duties on universities

8) Section 149 of the Equality Act 2010 creates a public-sector equality duty (PSED) on universities and other bodies undertaking public functions, which harmonises the

32 Malicious Communications Act 1998, [Section 1](#) – England and Wales only. In Scotland – Offensive Behaviour at Football Matches and Threatening Communications (Scotland) Act 2012, [Section 6](#)

33 Communications Act 2003, [Section 127\(1\)](#)

34 Communications Act 2003, [Section 127\(2\)](#)

35 Protection from Harassment Act 1997 – partially applies in Scotland, but operates differently. Does not apply in Northern Ireland.

36 Protection from Harassment Act 1997, [Section 2](#)

37 Protection from Harassment Act 1997, [Section 7\(2\)](#)

equality duties across the protected characteristics. The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, universities are subject to the equality duty and “must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.”³⁸

Having “due regard to the need to advance equality of opportunity” involves:

- “Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people;
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.”³⁹

These duties should not in themselves be a barrier to free speech. As stated in a report by Universities UK, “tolerance and respect for opposing viewpoints, and the right to hold and express those opinions, are central to the preservation of the right to freedom of speech and entirely compatible with the fostering of good relations.”⁴⁰

Prevent guidance

9) The Prevent duty Guidance for higher education institutions made under s.29 of the Counter-terrorism and Security Act 2015 states at paragraph 11:

“[...] when deciding whether or not to host a particular speaker, RHEBs [relevant higher education bodies] should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event. This includes ensuring that, where any event is being allowed to proceed, speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event, rather than in a separate forum. Where RHEBs are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed.”⁴¹

38 Equality Act 2010, [Section 149\(1\)](#)

39 Equality Act 2010, [Section 149\(3\)](#)

40 Universities UK, [Freedom of speech on campus: rights and responsibilities in UK universities](#), February 2011, p 14

41 HM Government, [Prevent Duty Guidance: for Higher Education Institutions in England and Wales](#), 12 March 2015, para 11

Paragraph 19 further states:

“RHEBs will be expected to carry out a risk assessment for their institution which assesses where and how their students might be at risk of being drawn into terrorism. This includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit.”

In applying the guidance, those responsible for organising events need to balance the Prevent duty with the right to free speech and academic freedom, to which academic institutions have to pay particular regard. Therefore, under the Education Act universities have to “secure” free speech in universities and student union premises. Under the Prevent Guidance, those organising debates need to balance the duties - paying “due regard” to the Prevent duty, but “particular regard” to the right to free speech. This is a judgment call, properly left to universities and student unions (given the importance of their autonomy) which will need to be balanced depending on the information available.

The case law indicates that the guidance applies to extremist views which risk drawing people into terrorism and “if there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it.” The judgment also indicates the use of the words “entirely convinced that such risk can be fully mitigated,” could be interpreted as mitigation as far as reasonably practicable or mitigation so that there was no significant risk.⁴²

Role of student unions as Charity Trustees

When facilitating discussion, arranging events or engaging in political activities, student union trustees need to consider both the criminal and civil law implications of an event or speech (which are outlined above in points 7–10) as well as their charity law duties.

There are legal restrictions on the ability of charity trustees to use funds to support causes which are not within their charitable objectives—in the case of Student Unions, these are the welfare of students as students. However, it is permissible to use funds to facilitate debates, motions or speaker events on political issues (as distinct from campaigning) that do not affect students as students.⁴³

There are core duties on charity trustees (and therefore on student union trustees), some of which can be relevant to Free Speech:

- The Duty to manage a Charity’s asset’s responsibly. “Assets” is understood to include the good name and reputation of the Charity.
- The Duty to act in the best interests of the Charity. This requires trustees not to pursue personal priorities or views and instead to focus on the purposes of the Charity. There has been some confusion around whether this means student unions can comment on issues that do not affect students as students. Legal advice given to the NUS states that “expressions of view by the union’s

42 See R (Salman Butt) v Secretary of State for the Home Department [2017] EWHC 1930, [para 58](#)

43 Charity Commission for England and Wales, Operational Guidance 48: Students’ unions - B3 2, Political activities and campaigning, [paras 15–16](#)

membership on issues not affecting students as students are permissible under charity law” since “enabling such expressions of view are part and parcel of the unions’ role of providing a forum for students to debate issues.”⁴⁴

- The Duty to act with reasonable care and skill. This is a general trustee duty and includes a general duty to act lawfully and to be aware of all other obligations when undertaking their trustee duties (e.g. human rights obligations, Equality Act, Education Act duties, defamation, data protection).

44 [Legal opinion for the National Union of Students](#) Christopher McCall, Maitland Chambers, and Raj Desai, Matrix Chambers, p 9